IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 23955 of 2004

Between:

Mohd. Hafeez, S/o Mohd. Mahaboob Ali,

Aged about 53 years, Ex.Police Constable No.842,
Hanamkonda Police Station, Warangal District

..... PETITIONER

AND

1 The Director General of Police, (Admn), A.P. Hyderabad.
2 The Deputy Inspector General of Police, Warangal.
3 The Superintendent of Police, Warangal, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or Writ more in the nature of Writ of Certiorari and call for the records relating to the file in Rev. M.A. No. 5168/2002 in O.A. No. 168/93 dt 1-9-2004 and order in O.A. No. 168/93 dt 4-5-2002 on the file of the A.P. Administrative Tribunal,

Hyderabad and the orders of the 3rd respondent bearing No.C.No. 322/PR/88/D.O.No.958/91 dated 20-7-1991 and consequential orders in C.No.61/APP/91 dated 13.12.1991 of the 2nd respondent and orders in C. NO. 625/T1/92 dt 14-9-1992 of the first respondent and quash or set aside the same with all consequential benefits and further declare the proceedings of the 3rd respondent bearing C.No. 322/PR/88 D.O. No. 958/91 dated 20-7-1991 and consequential orders in C. No. 61/APP/91 dated 13-12-1999 of the 2nd respondent and the orders in Rc. No. 615 /T1/92 dated 14-9-92 of the first respondent as illegal, arbitrary unconstitutional and also being violative of principles of natural justice.

Counsel for the Petitioner: MR.B.RANGANADH RAO

Counsel for the Respondents: GP FOR SERVICES I (Home)

The Court made the following:

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ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed assailing the order, dated 01.09.2004 in Rev.M.A.No.5168 of 2002 in O.A.No.168 of 1993 and order, dated 04.05.2002 in O.A.No.168 of 1993 passed by the A.P. Administrative Tribunal.

2. The petitioner was working as a Police Constable in Hanamkonda Police Station. While so, he was issued with a charge Memo dated 19.12.1988 of the SDPO Jangaon alleging certain misconducts. Thereafter, an enquiry was conducted and ultimately the disciplinary authority removed him from service by order, dated 20.07.1991. Against the said order, an appeal was preferred and the same was also dismissed by the appellate authority. Therefore, he filed O.A.No.168 of 1993 before the Tribunal challenging the disciplinary proceedings and consequential orders of punishment. The Tribunal has considered this matter and recorded a finding that there was no illegality or irregularity in the conduct of the disciplinary enquiry and accordingly confirmed the order of punishment by an order, dated 04.05.2002, against which the present Writ Petition has been filed.

3. Learned counsel for the petitioner submits that the misconduct as alleged against the petitioner was not proved and there was no legally acceptable evidence in finding the petitioner guilty of the charges and this aspect was not considered and that the order of the Tribunal is not sustainable in law. He also submits that the findings were recorded based on mere surmises and conjectures and even though there is no sufficient evidence with regard to the alleged drunkenness, yet he was found guilty. He further submits that the doctor has clarified that though the petitioner consumed liquor he was not under its influence and in such a situation, holding the petitioner guilty for the offence of drunkenness is wholly misconceived. Further, he also submits that extracting of money during the period of suspension on account of Dasara Mamool is also not established, and therefore, the learned Tribunal ought to have interfered with the punishment.

4. We have heard the learned Government Pleader and also perused the material on record.

5. The petitioner was charged with the following misconducts:

i. In misbehaving with a lady in drunken state, attempt to outrage the

modesty of Jinukala Narsamma, creating nuisance at old bus depot, Hanamkonda by beating the passers in drunken state.

ii. In extracting money from the public under threat on the name of Hanamkonda Police Station and getting bad name to police during suspension period.

6. But, however, on an enquiry, it was found that the charge relating to outraging the modesty was not established. It is also brought to the notice of this Court that the criminal cases filed against the petitioner in respect of the above two charges also ended in acquittal, but however, the learned counsel submits that the punishment as meted out to the petitioner is grossly disproportionate to the alleged gravity of misconduct and that the punishment is wholly unsustainable in law. The learned counsel would submit that the gravamen of the charge is only relating to the outraging the modesty, and the alleged drunkenness is only an ancillary so as to support the gravity of the charge. Hence, he submits that the order of punishment is liable to be set aside. We have also heard the learned Government Pleader.

7. We find that the charge of drunkenness was established beyond pale of controversy. But, however, we find that the charges as proved by the enquiry officer cannot be said to be suffer from any infirmity or lack of evidence. However, we find that the petitioner had worked for about 21 years and as on the date of removal, he had put in nearly 21 years of service and removing him from service, which deprived him of all the benefits for the previous service, would be too harsh and hard, which would permanently deprive him of his livelihood.

8. Under those circumstances, we are of the considered view that instead of awarding punishment of removal from service, punishment of compulsory retirement would meet the ends of justice so that the petitioner would be able to eke out his balance life with the retiral benefits. Accordingly, while confirming the disciplinary action taken against the petitioner, we modify the punishment to that of compulsory retirement instead of removal from service and consequently the petitioner will be

eligible for the retirement benefits for the service rendered in accordance with the Rules.

9. Accordingly, the Writ Petition is partly allowed to the extent mentioned above.

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G. BIKSHAPATHY, J.

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P.S. NARAYANA, J.

Date: 20.01.2005

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To

1 The Director General of Police, (Admn), A.P. Hyderabad.
2 The Deputy Inspector General of Police, Warangal.
3 The Superintendent of Police, Warangal, Warangal District.

4 2 CCs to the G.P. for Services-I (Home), High Court of A.P., Hyderabad (OUT).

5 2 CD copies.